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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JAMES A. GARDIN,

11 Plaintiff,

12 v.

13 CORRECTIONAL OFFICER MAHN,

14 Defendant.  
15

CASE NO. C09-5116RJB

ORDER DIRECTING SERVICE  
BY UNITED STATES  
MARSHALL AND  
PROCEDURES

16 Having reviewed the record the court orders as follows.

17 (1) Service by United States Marshal  
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19 It is hereby ORDERED that the United States Marshal shall send the following to each  
20 named defendant by first class mail: a copy of the Complaint and of this Order, two copies of  
21 the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of service  
22 of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All  
23 costs of service shall be advanced by the United States. The Clerk shall assemble the  
24 necessary documents to effect service.

25 (2) Response Required  
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1 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of  
2 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**  
3 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a  
4 motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil  
5 Procedure.

6  
7 Any defendant who fails to timely return the signed Waiver will be personally served  
8 with a summons and complaint, and may be required to pay the full costs of such service,  
9 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or  
10 motion permitted under Rule 12 within **thirty (30) days** after service.

11 (3) Filing and Service by Parties, Generally

12 All original documents and papers submitted for consideration by the court in this case,  
13 and a duplicate of all such papers, are to be filed with the Clerk of this court. The originals  
14 and copies of all such papers shall indicate in the upper right-hand corner the name of the  
15 Magistrate Judge to whom the copies are to be delivered. The papers shall be accompanied  
16 by proof that such documents have been served upon counsel for the opposing party (or upon  
17 any party acting pro se). The proof shall show the day and manner of service and may be  
18 written acknowledgment of service, by certificate of a member of the bar of this court, or by  
19 affidavit of the person who served the papers.  
20

21 (4) Motions

22 Any request for court action shall be set forth in a motion, properly filed and served. A  
23 party must file and serve with the motion a supporting memorandum. The motion shall  
24 include in its caption (immediately below the title of the motion) a designation of the Friday  
25 upon which the motion is to be noted upon the court's calendar. That date shall be the third  
26

1 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment).

2 All briefs and affidavits in opposition to any motion shall be filed and served not later than  
3 4:30 p.m. on the Monday immediately preceding the Friday appointed for consideration of  
4 the motion. If a party fails to file and serve timely opposition to a motion, the court may  
5 deem any opposition to be without merit. The party making the motion may file, not later  
6 than 4:30 p.m. on the Thursday immediately preceding the Friday designated for  
7 consideration of the motion, a response to the opposing party's briefs and affidavits.  
8

9 (5) Motions for Summary Judgment

10 If one of the parties files a motion for summary judgment pursuant to Federal Rules of  
11 Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56  
12 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion  
13 for summary judgment if the moving party has shown the absence of issues of material fact  
14 and an entitlement to judgment as a matter of law. A nonmoving party may not rest upon the  
15 mere allegations or denials of prior pleadings. Rather, successful opposition to a motion for  
16 summary judgment requires the nonmoving party to set forth, through affidavits or other  
17 evidence, specific facts showing a genuine issue for trial. Failure by the nonmoving party to  
18 oppose a summary judgment motion or to present counter evidence could result in the Court  
19 accepting the moving party's evidence as the truth, and entering final judgment in favor of  
20 the moving party without a full trial. Rand v. Rowland, 113 F.3d 1520 (9th Cir. 1997).  
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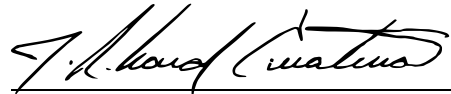
22 (6) Direct Communications with District Judge or Magistrate Judge

23 No direct communication is to take place with the District Judge or Magistrate Judge with  
24 regard to this case. All relevant information and papers are to be directed to the Clerk.  
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26 (7) Clerk's Action

1           The Clerk is directed to send a copy of this Order and of the General Order issued by the  
2 Magistrate Judges to plaintiff.

3           DATED this 27<sup>th</sup> day of April, 2009.

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6 J. Richard Creatura  
7 United States Magistrate Judge  
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